

## Federal Acquisition Regulation

## 22.1306

(b) The requirements of the clause at 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 9058, Feb. 23, 1998]

### 22.1303 Waivers.

(a) The agency head, with the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance Programs (OFCCP), Department of Labor (Deputy Assistant Secretary), may waive any or all of the terms of the clause at 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b)(1) The head of a civilian agency, with the concurrence of the Deputy Assistant Secretary, or, (2) the Secretary of Defense may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of a civilian agency shall notify the Deputy Assistant Secretary in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Deputy Assistant Secretary to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicita-

tions under any means of sealed bidding unless it is made more than 10 days before the date set for bid opening.

[48 FR 42258, Sept. 19, 1983, as amended at 52 FR 19803, May 27, 1987; 63 FR 9058, Feb. 23, 1998]

### 22.1304 Department of Labor notices and reports.

(a) The contracting officer shall furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary.

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and disabled veterans unless all of the terms of the clause at 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, have been waived (see 22.1303). The contractor shall use Standard Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

[53 FR 661, Jan. 11, 1988, as amended at 63 FR 9058, Feb. 23, 1998]

### 22.1305 Collective bargaining agreements.

If performance under the clause at 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor (DOL) will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 9058, Feb. 23, 1998]

### 22.1306 Complaint procedures.

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to the Veteran's Employment Service of DOL, through the local Veteran's Employment Representative or designee, at the local

## 22.1307

State employment office. The Deputy Assistant Secretary is primarily responsible for making investigations of complaints.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 9058, Feb. 23, 1998]

### 22.1307 Actions because of noncompliance.

The contracting officer shall take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era. These sanctions (see 41 CFR 60-250.28) may include—

- (a) Withholding from payments otherwise due;
- (b) Termination or suspension of the contract; or
- (c) Debarment of the contractor.

[48 FR 42258, Sept. 19, 1983, as amended at 63 FR 9058, Feb. 23, 1998]

### 22.1308 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts when the contract is for \$10,000 or more or is expected to amount to \$10,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, “United States” includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam); or

(ii) The agency head has waived, in accordance with 22.1303(a) or 22.1303(b) all of the terms of the clause.

(2) If the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1303(a) or 22.1303(b), use the basic clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the

## 48 CFR Ch. 1 (10-1-99 Edition)

clause at 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

[48 FR 42258, Sept. 19, 1983, as amended at 53 FR 662, Jan. 11, 1988; 55 FR 38517, Sept. 18, 1990; 63 FR 9058, Feb. 23, 1998]

## Subpart 22.14—Employment of Workers with Disabilities

### 22.1400 Scope of subpart.

This subpart prescribes policies and procedures for implementing Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR part 60-741). In this subpart, the terms *contract* and *contractor* include *subcontract* and *subcontractor*.

### 22.1401 Policy.

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified individuals with disabilities, without discrimination based on their physical or mental disability.

[63 FR 34074, June 22, 1998]

### 22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of \$10,000 for supplies and services (including construction) except as waived by the Secretary of Labor. The clause at 52.222-36, Affirmative Action for Workers with Disabilities, implements the Act.

(b) The requirements of the clause at 52.222-36, Affirmative Action for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

[63 FR 34074, June 22, 1998]

### 22.1403 Waivers.

(a) The agency head, with the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), may